

UNITED STATES BANKRUPTCY COURT
For the Northern District of Illinois
Eastern Division

In re: HEIDI BROWN-POLK,) 19-02277
) Judge LaShonda A. Hunt
Debtor.) Trustee Marilyn O. Marshall

NOTICE OF MOTION

To: Please see attached Service List.

PLEASE TAKE NOTICE that on April 15, 2019 at 9:30 a.m. or as soon thereafter that I can be heard, I shall appear in the courtroom usually occupied by the Honorable LaShonda A. Hunt or any judge sitting in her stead at 219 S. Dearborn, room 719, Chicago, Illinois and then and there present the attached Objection to Claim.

/s/ _____
Jordan T. Hoffman

CERTIFICATE OF SERVICE

I, Jordan T. Hoffman, an attorney, hereby certify that I caused a true and correct copy of the above-described Notice and the Attached Motion to be served upon the parties to whom it is directed by serving the same in accordance with the attached service list.

/s/ _____
Jordan T. Hoffman
ARDC No. 6195896
Jordan TraVaille Hoffman, P.C.
2711 E. New York St., Ste. 205
Aurora, IL 60502
(888) 958-4529
jthoffmanlaw@gmail.com

SERVICE LIST

By Electronic Mail to:

1. Patrick S Layng
USTPRegion11.ES.ECF@usdoj.gov

2. Marilyn O Marshall
courtdocs@chi13.com

3. Kenneth W. Bach, Johnson, Blumberg & Associates, LLC
kennethb@johnsonblumberg.com

By United States Mail to:

4. Heidi Brown-Polk, 932 E. 46th St., Chicago, IL 60653

UNITED STATES BANKRUPTCY COURT
For the Northern District of Illinois
Eastern Division

In re: HEIDI BROWN-POLK,) 19-02277
) Judge LaShonda A. Hunt
Debtor.) Trustee Marilyn O. Marshall

OBJECTION TO CLAIM OF DEUTSCHE BANK

NOW COMES, the Debtor herein, Heidi Brown-Polk by her attorney, Jordan T. Hoffman pursuant to Fed. Bankr. P. 3007 and Local Rule 3007-1 and she Objects to the Claim of Deutsche Bank for the following reasons; THAT:

1. The court has jurisdiction over this matter pursuant to 28 U.S.C. §§1334 and 157. This is a core proceeding pursuant to §157 (b)(2)(B).
2. Debtor filed her petition for relief herein pursuant to 11 U.S.C §1301 et seq. on January 27, 2019.
3. The Debtor is the owner of real estate located at 932 E. 46th Street, Chicago, Illinois 60653.
4. Deutsche Bank National Trust Company as Trustee, in trust for registered Holders of Long Beach Loan Trust No. 2006-WL2, Asset Backed Certificates, Series, 2006-WL2 (hereafter “Deutsche Bank”) filed its Claim No. 7-1 in this matter on February 28, 2019 (See Exhibit “A”).
5. The proof of claim (“hereafter POC”) is objected to for the following reason(s).
6. As a part of the preparation for filing the Debtor's petition for relief, a tri-merge credit report was ordered on January 24, 2019 (See attached Exhibit “B”).
7. The Servicer of the loan for which Deustche Bank is the Trustee is Select Portfolio Services, Inc. which reported Debtor's monthly payment as being One Thousand One Hundred and Thirty-two Dollars (\$1,132.00) on January 19, 2019 (See Exhibit “B,” p, 2) .
8. In an attachment to its POC entitled “Mortgage Proof of Claim Attachment,” Deutsche Bank states that Debtor's post-petition mortgage payment is \$1,435.65 and indicates that the principal and

interest payment is \$854.94 and that the escrow payment is \$580.71 which reflects an increase in the post-petition mortgage payment of \$303.35 or an increase of 26.82% (See Exhibit "A," p.4).

9. The Mortgage Proof of Claim Attachment also states that the total debt owed by Debtor to Deustche Bank is \$376,756.98. This includes principal and interest due of \$32,206.12. It also recites that fees and costs due to Deustche Bank are \$4,458.35. Further it recites an "Escrow Deficiency Balance" of \$20,196.06 (Id). It appears from the additional pages that itemize activity that the amount is comprised of homeowner's tax escrows of \$11,371.03 and insurance escrows of \$7,755.00 with \$1,070.03 being monies that are unaccounted for or indeterminable. Moreover, it adds a "projected escrow shortage" of \$1,423.20 (Id).

10. The increase in the post-petition mortgage payment by Deustche Bank appears to be an attempt by it to collect pre-petition escrow payments which are properly paid as a part of the Debtor's Chapter 13 Plan. This runs afoul of a line of decisions that have found that a mortgage holder cannot increase the post-petition escrow payment as a means of making up for a debtor's failure to make pre-petition mortgage escrow payments. (Please See, *Campbell v. Countrywide Home Loans, Inc.*, 545 F.3d 348 (5th Cir. 2008); *In re Rodriguez*, 629 F.3d 136 (3d Cir. 2010); *In re Beaudet*, 455 B.R. 671 (Bankr. M.D. Tenn. 2011) and *IN RE HARRIS*, No. 11-82633 (Bankr. C.D. Ill. Apr. 23, 2012)).

WHEREFORE, the Debtor, Heidi Brown-Polk requests that this Honorable Court enter an order requiring Deustche Bank to amend its claim and reduce the post-petition mortgage payment to the amount of \$1,132.00 and for such other relief as this Honorable Court deems just and appropriate in the circumstances.

Respectfully submitted,
HEIDI BROWN-POLK, Debtor

By: /s/ _____

Jordan T. Hoffman, Her Attorney
ARDC No. 6195896
Jordan TraVaille Hoffman, P.C.
2711 E. New York St., Ste. 205
Aurora, IL 60502
(888) 958-4529
jthoffmanlaw@gmail.com

EXHIBIT "A"

Fill in this information to identify the case:

Debtor 1	HEIDI B POLK
Debtor 2	(Spouse, if filing) -
United States Bankruptcy Court for the:	
Case number	19-02277

Official Form 410

Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	Deutsche Bank National Trust Company, as Trustee, in trust for registered Holders of Long Beach Mortgage Loan Trust 2006-WL2, Asset-Backed Certificates, Series 2006-WL2 Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor _____		
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____		
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent? Select Portfolio Servicing, Inc. Name Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should payments to the creditor be sent? (if different) Select Portfolio Servicing, Inc. Name P.O. Box 65250 Number Street Salt Lake City UT 84165-0250 City State ZIP Code Contact phone Tel # 1-800-258-8602 Contact email N/A	Attn: Remittance Processing, P.O. Box 65450 Number Street Salt Lake City UT 84165-0450 City State ZIP Code Contact phone Tel # 1-800-258-8602 Contact email N/A
Uniform claim identifier for electronic payments in chapter (if you use one): -----			
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY		
5. Do you know if anyone else has filed a proof of claim for this claims?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____		

Part 2: Give Information About the Claim as of the Date the Case was Filed

6. Do you have any number you use to identify the debtor?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: <u>4182</u>
7. How much is the claim? <u>\$376,756.98</u>	Does this amount include interest or other charges? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claims?	Example: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as healthcare information. <u>Money loaned</u>
9. Is all or part of the claim secured?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. The claim is secured by a lien on property. Nature of property: <input checked="" type="checkbox"/> Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle. <input type="checkbox"/> Other. Describe: _____
Basis for perfection: <u>Recorded Deed of Trust / Mortgage</u> Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)	
Value of property: \$ _____	
Amount of the claim that is secured: <u>\$376,756.98</u>	
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)	
Amount necessary to cure any default as of the date of the petition: <u>\$58,283.73</u>	
Annual Interest Rate (when case was filed) <u>2.00000%</u> <input type="checkbox"/> Fixed <input checked="" type="checkbox"/> Variable	
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes. Check all that apply:	Amount entitled to priority
A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.	<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). \$ _____ <input type="checkbox"/> Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). \$ _____ <input type="checkbox"/> Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). \$ _____ <input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). \$ _____ <input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). \$ _____ <input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(_____) that applies. \$ _____		
<small>* Amounts are subject to adjustment on 4/1/19 and every 3 years after that for cases begun on or after the date of adjustment.</small>			

Part 3: Sign Below

The person completing this proof of claim must sign and date it.
FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

**A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both.
 18 U.S.C. §§ 152, 157 and 3571.**

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 02/28/2019
 MM / DD / YYYY

/s/ Kenneth W. Bach

Signature

Print the name of the person who is completing and signing this claim:

Name	Kenneth W. Bach		
	First name	Middle name	Last name
Title	Attorney for Creditor		
Company	Johnson, Blumberg, & Associates, LLC		
Identify the corporate servicer as the company if the authorized agent is a servicer.			
Address	230 W. Monroe Street, Suite 1125		
	Number	Street	
	Chicago, IL 60606		
	City	State	ZIP Code
Contact phone	312-541-9710		
Email	kennethb@johnsonblumberg.com		

Mortgage Proof of Claim Attachment

Case 19-02277 Claim 7-1 Part 2 Filed 02/28/19 Desc POC attachment Page 1 of 16

Part 1: Mortgage and Case Information

Case number: 19-02277
 Debtor 1: HEIDI B POLK
 Debtor 2: Last 4 digits to 4182
 identify:
 Deutsche Bank National Trust Company, as Trustee, in trust for registered Holders of Long Beach Mortgage Loan Trust 2006-WL2, Asset-Backed Certificates, Series 2006-WL2
 Select Portfolio Servicing, Inc.
 Fixed accrual/daily simple interest/other: VARIABLE

Part 2: Total Debt Calculation

Principal Balance:	\$333,370.66
Interest due:	\$18,731.91
Fees, costs due:	\$4,458.35
Escrow deficiency for funds advanced:	\$20,196.06
Less total funds on hand:	\$0.00
Total debt:	\$376,756.98

Part 3: Arrearage as of Date of the Petition

Prepetition fees due:	\$4,458.35
Escrow deficiency for funds advanced:	\$20,196.06
Projected escrow shortage:	\$1,423.20
Less funds on hand:	\$0.00
Total prepetition arrearage:	\$58,283.73

If you file a claim secured by a security interest in the debtor's principal residence, you must use this form as an attachment to your proof of claim. See Separate Instructions.

Part 4: Monthly Mortgage Payment

Principal and interest due:	\$32,206.12
Monthly escrow:	\$580.71
Private mortgage insurance:	\$0.00
Total monthly payment:	\$31,435.65

Mortgage Proof of Claim Attachment: Additional Page

Case number: 19-02277
 Debtor 1: HEIDI B POLK

Part 5: Loan Payment History from First Date of Default

A. Date	B. Contractual Funds received Amount	C. D. Amount incurred	E. Description	F. Contractual due date	G. Prin, int and esc past due balance	How Funds were Applied/Amount Incurred			Balance After Amount Received or Incurred		
						H. Amount to principal	I. Amount to interest	J. Amount to escrow	K. Unapplied fees or charges	L. Principal balance	M. Accrued interest balance
01/08/2007	\$275.00	\$0.00	TITLE CURE COSTS		\$0.00	\$275.00				\$260,495.19	
01/08/2007	\$970.00	\$0.00	FC ATTY FEES		\$970.00					\$260,495.19	
03/23/2009	\$160.00	\$0.00	FC ATTY FEES		\$160.00					\$260,495.19	
08/19/2009	\$10.85	\$0.00	PROP INSPECTIO N		\$10.85					\$260,495.19	
09/14/2009	\$275.00	\$0.00	TITLE CURE COSTS		\$275.00					\$260,495.19	
09/14/2009	\$910.00	\$0.00	FC ATTY FEES		\$910.00					\$260,495.19	
02/24/2010	\$10.85	\$0.00	PROP INSPECTIO N		\$10.85					\$260,495.19	